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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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DAMON ELLIOTT,

Plaintiff,

*versus*

S. GILMORE, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:10-CV-177

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Damon Elliott, a federal prisoner currently confined at the Liberty County I.A.H. facility, proceeding *pro se*, brought this lawsuit against two employees of the Liberty County Jail.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See FED. R. Civ. P. 72(b)*.

After careful consideration, the court concludes Plaintiff's objections are without merit. As the magistrate judge found, Plaintiff's complaint does not set forth allegations demonstrating he was in imminent danger of serious physical injury at the time he filed the complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff admits he was no longer confined at the Liberty County Jail when he filed this complaint more than eighteen months after the incidents occurred. Accordingly, the complaint should be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

## O R D E R

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 16th day of December, 2010.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE